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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

In re:  
  
GIGA WATT, Inc., a Washington  
corporation,  
  
Debtor.

Case No. 18-03197 FPC 11  
  
The Honorable Frederick P. Corbit  
  
Chapter 7

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF TRUSTEE'S  
MOTION TO FIND THE  
PERKINS GROUP IN  
CONTEMPT AND TO IMPOSE  
SANCTIONS**

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF TRUSTEE'S  
MOTION TO FIND THE PERKINS GROUP  
IN CONTEMPT AND TO IMPOSE SANCTIONS

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1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *FTC v. Affordable Media*, 179 F.3d 1228 (9th Cir. 1999).....8

4 *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693 (9th

5 Cir. 1993) .....7

6 *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003) .....7

7 *Stone v. City and County of San Francisco*, 968 F.2d 850(9th Cir. 1992).....8

8 **STATUTES**

9 11 U.S.C. § 105.....7

10 28 U.S.C. § 1334.....1

11 28 U.S.C. § 157.....1

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1 Mark D. Waldron, the duly appointed Chapter 7 Trustee (“Trustee”) in the  
2 above-captioned case, hereby submits this Memorandum in support of the motion  
3 (the “Motion”), filed herewith, for an Order imposing civil contempt sanctions  
4 against Perkins Coie LLP, Lowell Ness (collectively, “Perkins”), Byrnes Keller  
5 Cromwell LLP, Ralph E. Cromwell, Jr., and Joffrey McWilliam (together with  
6 Perkins, “Perkins Group”), as set forth below. Unless otherwise defined herein,  
7 capitalized terms have the meanings ascribed to them in the Motion.

## 8 I. JURISDICTION

9 The Bankruptcy Court has jurisdiction under 28 U.S.C. § 1334 and  
10 28 U.S.C. § 157(b)(1). This matter is core. 28 U.S.C. § 157(b)(2)(A) and (O).

## 11 II. INTRODUCTION<sup>1</sup>

12 The Perkins Group barely escaped being sanctioned by the District Court  
13 after lying about the law and the ink has barely dried on this Court’s Order finding  
14 that the Perkins Group withheld critical documents from the Trustee. Mr.  
15 Cromwell has openly stated that he thinks “chaos and confusion” help cases to  
16 settle. The Trustee urges the Court to take Maya Angelou’s advice, “When  
17 someone shows you who they are, believe them the first time,” and impose civil  
18 contempt sanctions against the Perkins Group for filing the Third-Party Complaint  
19 in violation of the Automatic Stay Order and Preliminary Injunction.

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20 <sup>1</sup> Unless otherwise defined herein, capitalized terms have the meanings ascribed to  
21 them in other sections of this Memorandum.

1           The Third-Party Complaint improperly attempts to resurrect Mr. Dam's  
2 Lawsuit. Counts 1-3 of the Class Action Complaint filed in Mr. Dam's Lawsuit,  
3 alleged entitlement to the GW ICO trust funds. However, these claims are void  
4 pursuant to this Court's Automatic Stay Order, ECF No. 921 (main case).  
5 Attempting to resurrect the void Contract-Based Claims by filing the Third-Party  
6 Complaint violates the Automatic Stay Order.

7           Mr. Dam's Deception-Based Claims, counts 4-5 of his Class Action  
8 Complaint, seek direct and particular damages for Perkins' alleged deceptive acts  
9 regarding the Giga Watt Initial Coin Offering. These claims are enjoined until the  
10 Trustee's claims against Perkins are resolved. Adv. Proc. No. 21-80053, ECF No.  
11 39 at 31. Attempting to resurrect the enjoined Deception-Based Claims by filing  
12 the Third-Party Complaint violates the Preliminary Injunction.

13           Therefore, the Perkins Group should be held in contempt and sanctioned  
14 pursuant to the Court's authority under 11 U.S.C. § 105.

### 15                                   **III. BACKGROUND FACTS**

16           On November 18, 2020, the Trustee commenced an adversary proceeding  
17 against Perkins and others, Adversary Proceeding No. 20-80031 ("Trustee's  
18 Lawsuit").

19           On December 16, 2020, Mr. Dam filed a copycat action against Perkins  
20 Coie LLP, Lowell Ness, and affiliates in the United States District Court for the  
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1 Eastern District of Washington, Case No. 2:20-cv-464-SAB (“Mr. Dam’s  
2 Lawsuit”). Mr. Dam alleged three claims based on contract, (“Contract-Based  
3 Claims”) and two claims based on Perkins’ alleged deceptiveness (“Deception-  
4 Based Claims”). RJN No. 1

5 On September 26, 2021, the Court ruled that the Contract-Based Claims  
6 belong to the estate. Therefore, Mr. Dam’s assertion of the Contract-Based Claims  
7 was barred by the Automatic Stay Order and void. *Memorandum Opinion and*  
8 *Order Regarding Stay and Motion for Order to Show Cause* (“Automatic Stay  
9 Order”), ECF No. 921. The Court found that (1) Mr. Dam was trying to “jump the  
10 line of bankruptcy creditors,” Automatic Stay Order at 26, (2) allowing Jun Dam  
11 to recover on these claims “could decrease or eliminate the amount the Trustee  
12 could recover for the estate,” *id.* at 18, and (3) litigation of the Contract-Based  
13 Claims “would interfere with the Trustee’s ability to pursue claims for the benefit  
14 of all creditors and to ensure that all similarly-situated creditors are treated fairly,”  
15 *id.* at 18-19. The Perkins Group received a copy of the Automatic Stay Order as a  
16 registered participant in this Court’s electronic filing system.

17 On January 7, 2022, the U.S. District Court for the Eastern District of  
18 Washington stated:

19 In presenting their first argument [on appeal of this Court’s *Order*  
20 *Granting Motion to Strike Jury Demand*, ECF No. 49], **Perkins Coie**  
**et al. made several misrepresentations to the Court.**

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1 *Order Denying Motions and Appeals*, dated July 7, 2022, Case No. 2:21-cv-  
2 00159-SAB, RJN No. 2. (Emphasis added.)

3 On February 23, 2022, this Court enjoined litigation of the Deception-Based  
4 Claims, concluding:

5 The pursuit of Mr. Dam’s Lawsuit during the pendency of the  
6 Trustee’s Lawsuit threatens the jurisdiction of this court, the integrity  
7 of the bankruptcy process, and the orderly liquidation of the  
8 bankruptcy estate.

8 *Order Denying Mr. Dam’s Motion to Dismiss and Granting Trustee’s Motion for*  
9 *Preliminary Injunction*, Adv. Proc. No. 21-80053, ECF No. 39 at 31. The Court  
10 ordered that Mr. Dam’s Lawsuit was “**ENJOINED** until this Court issues a  
11 Report and Recommendation to the District Court or until the parties otherwise  
12 fully resolve the Trustee’s Lawsuit.” Preliminary Injunction, ECF No. 39 at 31.  
13 (Emphasis in original.) The Perkins Group received notice of the Preliminary  
14 Injunction on February 24, 2022. Egan Decl. at ¶ 6.

15 Mr. Dam has appealed the Automatic Stay Order and the Preliminary  
16 Injunction Order to the District Court. Those appeals are consolidated in Case No.  
17 2:22-cv-291-SAB. By Order of the District Court dated January 20, 2022, they are  
18 stayed pending the resolution of a mediation before The Honorable Benjamin P.  
19 Hursh which is scheduled to occur on January 20, 2022. RJN No. 3. There is no  
20 stay of the Trustee’s Lawsuit pending Mr. Dam’s appeals.

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1 On November 23, 2022, this Court found:

2 **Perkins’ previous disclosures of documents to the Trustee failed to**  
3 **include several critical documents on which Trustee now relies** to  
4 allege that Perkins represented Debtor and thus had certain legal  
duties to Debtor that it breached.

5 *Order Granting Trustee’s Motion to Amend Complaint, Motions to Take Judicial*  
6 *Notice, and Denying Motions to Strike Cromwell Affidavit, ECF No. 134 at 5-6, ¶*  
7 15. (Emphasis added.)

8 On November 23, 2022, the Trustee filed his First Amended Complaint.

9 On December 7, 2022, Perkins filed in the Trustee’s Lawsuit *Perkins Coie*  
10 *and Lowell Ness’ Answer, and Affirmative Defenses to First Amended Complaint*  
11 *and Third-Party Complaint Against Jun Dam and a Class of Similarly Situated*  
12 *Token Purchasers*, ECF No. 139 (“Perkins Answer”). The Perkins Answer  
13 includes a Third-Party Complaint in which Perkins joins Mr. Dam and his  
14 purported WTT Token class so that they can assert the barred, void Contract-  
15 Based Claims and the enjoined Deception-Based Acts Claims. Perkins alleges:

16 Both the Trustee and Mr. Dam **claim an interest in the same funds** –  
17 the token purchase proceeds allegedly deposited into “escrow” in  
Perkins IOLTA account – and **which both the Trustee and Mr. Dam**  
**claim the right to recover from Perkins.**

18 Perkins’ Answer, Third-Party Complaint at 139: 39:1-4, para. 8. (Emphasis  
19 added.) Disregarding the Court’s ruling that only the Trustee can assert claims to  
20 the GW ICO trust funds, Perkins seeks to join Mr. Dam within the Trustee’s  
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1 Lawsuit “to determine the respective rights of Perkins, the Trustee, and Mr. Dam  
2 regarding funds held by Perkins in its IOLTA account.” Perkins Answer, Third-  
3 Party Complaint at 139: 39:5-9, ¶ 9. (Emphasis added.)

4 Perkins’ Answer continues:

5 Since Mr. Dam, in both his individual and representative capacities,  
6 asserts an interest in the corpus of the alleged trust (the escrow and  
7 the token purchase proceeds), and therefore claims the rights of a  
8 “beneficiary” of the alleged trust, Perkins is entitled to and hereby  
9 does join him in both his individual and representative capacities, and  
as a “virtual” representative of other token purchasers . . . to  
10 determine the respective rights and recovery, if any, of the Trustee,  
11 Mr. Dam, and similarly situated token purchasers.

12 Perkins Answer, Third Party-Complaint, ECF No. 139 at 40:16-24. (Emphasis  
13 added.)

14 Counterintuitively, the Third-Party Complaint alleges that the Automatic  
15 Stay Order and Preliminary Injunction “demonstrate that joinder is required under  
16 Rule 19.” Third-Party Complaint, ECF No. 139 at 40:4-5.

#### 17 IV. ARGUMENT

##### 18 A. Perkins Violated the Automatic Stay Order and the Preliminary 19 Injunction Order

20 Joining Mr. Dam so that he can assert the Contract-Based Claims violates  
21 the Automatic Stay Order. Joining Mr. Dam so that he can assert the Deception-  
22 Based Claims violates the Preliminary Injunction.

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1     **B.     The Court Has the Statutory Power to Impose Civil Contempt**  
2           **Sanctions Against the Perkins Group**

3           The Bankruptcy Court has the authority to impose civil contempt sanctions  
4 under section 105(a) of the Bankruptcy Code when an offending party knowingly  
5 violates a definite and specific court order. 11 U.S.C. § 105; *Knupfer v. Lindblade*  
6 (*In re Dyer*), 322 F.3d 1178, 1189–90 (9th Cir. 2003); *In re Dual-Deck Video*  
7 *Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir. 1993). The  
8 Trustee has the burden of showing a willful violation of the automatic stay by  
9 clear and convincing evidence. *Dyer*, 322 F.3d at 1190–91. Willfulness is  
10 established upon a finding that the party knew of the Order and that the actions in  
11 violation of the Order were intentional. *See Dyer*, 322 F.3d at 1191 (holding that a  
12 party is subject to sanction for violating the automatic stay “upon a finding that  
13 the defendant knew of the automatic stay and that the defendant’s actions which  
14 violated the stay were intentional”).

15          The Perkins Group received notice of the Automatic Stay Order pursuant to  
16 Court’s Notice of Electronic Filing system. On February 24, 2022, the Trustee  
17 sent a copy of the Preliminary Injunction to Perkins’ counsel. Egan Decl. at ¶ 6.  
18 Perkins did not file the Third Amended Complaint by accident. Thus, Perkins’  
19 violation was willful.

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1           Once willfulness is established, as it is here, “[t]he burden then shifts to the  
2   contemnors to demonstrate why they were *unable* to comply” with the Court  
3   order. *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (*quoting*  
4   *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir.  
5   1992)). Therefore, the Perkins Group members are required to explain why they  
6   were unable to comply with the Automatic Stay Order and Preliminary Injunction.

7   **C.   Sanctions Are Appropriate**

8           By willfully violating the Automatic Stay Order and Preliminary Injunction,  
9   the Perkins Group is intentionally (1) helping Mr. Dam and his purported class of  
10   WTT Token holders to jump the line of bankruptcy creditors, (2) threatening to  
11   decrease or eliminate the amount the Trustee can recover for the estate, (3)  
12   interfering with the Trustee’s ability to pursue claims against Perkins for the  
13   benefit of all creditors, and (4) undermining the jurisdiction of this Court, the  
14   integrity of the bankruptcy process, and the orderly liquidation of the bankruptcy  
15   estate. This inference arises directly from the Perkins Group’s knowledge of the  
16   Automatic Stay Order and Preliminary Injunction, which expressly state these  
17   purposes. Mr. Cromwell’s preference for “chaos and confusion” bolsters the  
18   inference of an improper intent, making the appropriateness of sanctions all the  
19   more urgent. Egan Decl. at ¶ 8.

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